



Dawn Michele Bellis
Secretary, Standards Council

31 August 2017

To: Interested Parties

Subject:

Standards Council Decision (Final):	D#17-2
Standards Council Agenda Item:	SC#17-8-2-a
Date of Decision*:	17 August 2017
NFPA 30, <i>Flammable and Combustible Liquids Code</i> , 2018 Edition	

Dear Interested Parties:

At its meeting of August 15 - 17, 2017, the Standards Council considered an appeal on the above referenced matter. The Council's Final decision is now available and is attached herewith.

Sincerely,

A handwritten signature in cursive script that reads "Dawn Michele Bellis".

Dawn Michele Bellis
Secretary, NFPA Standards Council

cc: D. Berry, S. Everett, L. Fuller, L. Hartman, S. Bershad
Members, CC Flammable and Combustible Liquids (FLC-AAC)
Members, TC Storage and Warehousing of Containers and Portable Tanks (FLC-SWC)
Members, NFPA Standards Council (AAD-AAA)
Individuals Providing Appeal Commentary

*NOTE: Participants in NFPA's codes and standards making process should know that limited review of this decision may be sought from the NFPA Board of Directors. For the rules describing the available review and the method for petitioning the Board for review, please consult section 1-7 of the Regulations Governing the Development of NFPA Standards (Regs.) and the NFPA Regulations Governing Petitions to the Board of Directors from Decisions of the Standards Council. Since this Council decision is not "related to the issuance of a document" as referenced in 1.7.2 of the Regs., notice of the intent to file such a petition must be submitted to the Clerk of the Board of Directors within a reasonable time period.



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SUMMARY OF ACTION (for convenience only; not part of official decision): The Standards Council voted to deny the appeal to overturn the Technical Committee ballot results on SR 210 and the Correlating Committee actions on SCRs 1, 2, 3, 4, 5 and 6.

DECISION:

At its meeting of August 15-17, 2017, the Standards Council considered an appeal from Steven D. Wolin of The Reliable Automatic Sprinkler Co., Inc. The appeal requests that the Standards Council overturn the Technical Committee amendment ballot results on SRs 202, 203, 204, 206, 210, 211 and 212 for the 2018 Edition of NFPA 30, *Flammable and Combustible Liquids Code*. Specifically, the appeal requests the issuance of SRs 202, 203, 204, 206, 210, 211 and 212.

As background, The Reliable Automatic Sprinkler Co., Inc. (“Reliable”) submitted a number of Public Comments at the second draft stage. The public comments at issue were related to requirements for protection for rack storage of Class II and Class III liquids. All of Reliable's Public Comments referred to a new table and protection scheme Reliable sought to have included in the 2018 edition of NFPA 30. The table with the reference to the related protection scheme, “Scheme E”, was included in PC 55. At the second draft meeting, the Technical Committee (“TC”) created a number of second revisions that correlated to Reliable’s PCs including SR 210 in response to Public Comment 55 that included the recommended table.

In the TC balloting of the second draft revisions, there was one negative vote on SR210 – that of the Technical Committee Chair. Upon recirculation in accordance with the *Regulations Governing the Development of NFPA Standards (“Regs”)*, Second Revision 210 failed ballot while a number of the other related Second Revisions resulting from Reliable’s Public Comments did not. A number of the TC member ballots on recirculation voted in the negative and referenced the Chair’s negative comments.

The Correlating Committee then made Second Correlating Revisions to remove from the Second Draft all of the material included in Reliable’s Public Comments because without the table that was the subject matter of Second Revision 210, the material in the other Second Revisions correlated to Reliable’s Public Comments referred to text that did not exist.

The appeal requests the Standards Council overturn the failure of the Technical Committee to include the text of Second Revision 210, the failure of the chair of the technical committee to recuse himself from technical discussions and the action of the Correlating Committee in recommending issuance of Second Correlating Revisions that effectively removed the text proposed in Reliable’s Public Comments. While not stated as a basis for the appeal, the appeal also makes reference to requirements for Staff Liaisons in the *Guide for Conduct of Participants in the NFPA Standards Development Process* without indicating that in fact the staff liaison engaged in improper conduct.

According to testimony at the hearing on this appeal, Reliable did not file a Notice of Intent to Make a Motion (NITMAM) believing it inappropriate as the concerns related to procedural, not technical issues.

As a result, the Council does not have the benefit of the membership's debate at the Technical Meeting on the technical matters at issue in the rejected Second Revisions.

The text subject to appeal did not gain sufficient support within the standards development process for inclusion in the 2018 Edition of NFPA 30, *Flammable and Combustible Liquids Code*. The appeal requests that the Council overturn the results yielded by the standards development process as a result of procedural errors including that the chair failed to recuse himself at the technical committee meeting and that the correlating committee acted outside of its scope. There was also testimony that an independent consultant who the Appellant believes to be related to the Staff Liaison for the responsible technical committee had contacted members of the technical committee during the recirculation of the ballot to urge for negative votes.

Testimony at the hearing indicated that while the chair did vote in the negative on the ballot, he did not participate in the discussion at the meeting. Rather, he indicated once the committee discussion concluded that he would be voting in the negative on this particular issue. He testified that he purposefully withheld his opinion until the end of the discussion on this issue, at which point he did recuse himself and shared his opinion. The Chair further indicated that he took these actions in order not to impact the discussion but to put his fellow committee members on notice that he would be voting in the negative. He then did vote in the negative and included his reasons for doing so on his ballot.

On appeal, the Council accords great respect and deference to the NFPA standards development process. In conducting its review, the Council will overturn the results of that process only where a clear and substantial basis for doing so is demonstrated. It was not clear from the testimony at the hearing that the actions of the Chair in this case amounted to the assertion of a position during the technical discussion. The Council urges all Technical Committee chairs to be diligent in their recusals on matters before committees and encourages chairs to discuss such matters in advance with the responsible Staff Liaison.

While there was a specter raised of misconduct on the part of the Staff Liaison in this case, during the hearing it was clear that the appellant had no evidence of and in fact was not making any claim of such misconduct. Rather, because a participant in NFPA proceedings, suspected by the Appellant to be related to the Staff Liaison, contacted members of the Technical Committee while the ballot was recirculating to advance a position, and because the Staff Liaison's name was on a number of the Technical Committee's Second Revisions, there was suspicion of improper conduct on the part of the Staff Liaison. The Council found no evidence of any improper conduct on the part of the Staff Liaison and while at least one member of the Technical Committee stated he had been contacted by the consultant, that member indicated this contact had no impact upon his vote. In addition, the Council notes that Second Revisions are entered into the NFPA Standards Development System by the Staff Liaison which records the Staff Liaison's name even though the Technical Committee, not the Staff Liaison, is proposing the desired text change. The Council found no evidence that any activity during the processing of this Standard rose to the level of creating a procedural error sufficient to override the outcome of the standards development process.

With regard to the Appellant's claim that the Correlating Committee was outside its responsibility in making the correlating revisions because they relate to a single technical committee and not multiple technical committees, the Council notes that Correlating Committees have a number of responsibilities under the *Regulations Governing the Development of NFPA Standards* ("Regs") including to "[p]repare proposed Codes, Standard, Recommended Practices, or Guides" according to Section 3.3.1.2. Correlating Committees are responsible for "resolving conflicts, achieving correlation among the recommendations of the Technical Committees, *correcting errors and omissions*, . . ." among other things. (See *Regs* at Section 3.4.2., emphasis added). There are a number of functions the Council relies upon Correlating Committees to perform; processing correlating revisions to remove text of a proposed standard that refer to a table or material which does not exist in the document is certainly within this scope.

The Council has reviewed the entire record concerning this matter and has considered all the arguments put forth in this appeal. In the view of the Council, this appeal does not present any clear and substantial basis on which to overturn the results yielded by the NFPA standards development process. Accordingly, the Council has voted to deny the appeal. The effect of this action is that the NFPA 30, *Flammable and Combustible Liquids Code* will not include the text of SRs 202, 203, 204, 206, 210, 211 and 212.

Council Member Chad Beebe voted against the Council's motion to deny this appeal. Council Members Gary Keith and James Golinveaux recused themselves from the deliberations and vote on the appeal.